



December 12, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-5806

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156027.

The Texas Department of Public Safety (the "department") received a request for a copy of all records regarding the requestor that are in the department's possession pertaining to his application for a concealed handgun license ("CHL"). You advise that you are releasing records relating to the hearing on the requestor's appeal of the denial of a CHL. You claim that the remaining records pertaining to the requestor's CHL application are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that section 411.192 of the Government Code makes confidential all records in a CHL file, including applications, with the exception that the department may disclose whether a named individual is licensed to carry a concealed handgun and may release a statistical report as authorized by section 411.193. In addition, you acknowledge that the requestor, who is an applicant for a CHL, has access to "disclosable records" and ask what records are disclosable to an applicant. Section 411.192 provides:

The department shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any

individual named in a specified list is licensed under this subchapter. The department shall, on written request and payment of a reasonable fee to cover costs of copying, disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. *Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code*, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee. The department shall notify a license holder of any request that is made for information relating to the license holder under this section and provide the name of the person or agency making the request. This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.

Gov't Code § 411.192 (emphasis added). Section 411.193 further states:

The department shall make available, on request and payment of a reasonable fee to cover costs of copying, a statistical report that includes the number of licenses issued, denied, revoked, or suspended by the department during the preceding month, listed by age, gender, race, and zip code of the applicant or license holder.

Gov't Code § 411.193. As the requestor seeks information regarding his own application for a CHL, the department must furnish copies of all disclosable records to him pursuant to section 411.192. Such disclosable records under section 411.192 include any records not made confidential by law other than section 411.192 and to which the requestor does not have a special right of access under such confidentiality statutes or under section 552.023 of the Government Code.

The submitted documents contain e-mail addresses obtained from the public that are excepted from public disclosure. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses confidential.¹ Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

¹House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). Section 552.137 requires the department to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. As there is no indication that one of the parties whose e-mail address appears in the submitted materials has consented to its release, the department must withhold it under section 552.137 of the Government Code. We have marked this information.

The requestor's e-mail address also appears in the documents. However, section 552.023 of the Government Code states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. It is clear that the requestor has a special right of access to this information under section 552.023. Accordingly, the department must release the requestor's e-mail address.

Further, section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

The submitted documents contain criminal history information generated by TCIC. However, under section 411.083 of the Government Code, the department shall grant access to such information to the person who is the subject of the information. Gov't Code § 411.083(b)(3). Thus, the department must release this information to the requestor.

The documents also contain social security numbers. A social security number may be excepted from required public disclosure under section 552.101 of the Government Code in

conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Again, however, section 552.023 of the Government Code gives a person a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. The department must release the requestor's social security number to him.

Similarly, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. While section 552.130 would normally require the department to withhold the driver's license number and license class information, the department must release this information pursuant to the requestor's special right of access under section 552.023.

The submitted information also includes fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. These new statutes were enacted by the Seventy-seventh Legislature and took effect September 1, 2001. *See* Act of May 24, 2001, 77th Leg., R.S., H.B. 678, § 2 (to be codified as Gov't Code §§ 559.001, .002, and .003). They provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

The fingerprint information is thus made confidential under sections 559.002 and 559.003. However, because section 559.002 prohibits disclosure to "another person" and requires an individual to consent to disclosure, we conclude that the requestor may obtain his own biometric identifier under section 559.002.

In summary, we have marked the e-mail address that you must withhold under section 552.137. You must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 156027

Enc. Submitted documents

c: Mr. Maury F. Welsh
1450 North Highway 360 #302
Grand Prairie, Texas 75050
(w/o enclosures)